

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

X
Chapter 11

461 7th Avenue Market, Inc.,

Case no. 18-22671

Debtor.

X

STATEMENT REGARDING DOB DETERMINATION

Delshah 461 Seventh Avenue, LLC, (the “Landlord”), the landlord under the lease (“Lease”) for 461 Seventh Avenue, New York, New York (the “Property”), as and for is statement regarding (a) the appropriate level of New York City Department of Buildings (“DOB”) review for conditional lease assumption determination, and (b) a means to resolve the roof issues at the Property, states:

1. At the hearing on November 29, 2018, the parties reported that the Department of Buildings conducted an audit of the Debtor’s proposed renovations to cure certain Lease defaults asserted by the Landlord. The Debtor stated that it was challenging the audit objections and/or seeking variances from compliance. The Landlord stated that the parties’ respective code consultants had agreed to write a joint letter to the DOB stating their positions on the objections. The Court requested that the parties confer (a) on an agreement on the stage in the DOB regulatory process which would be deemed final for purposes of conditional lease assumption determination, and (b) procedures for submissions and joint meetings with the DOB. The Debtor and the Landlord agreed to the proposals outlined below.

2. Plan Examiner Meeting. The parties will first draft a joint submission stating their positions regarding the audit objections, and then meet jointly with the plan examiner to present their respective positions.

3. CCD1 Review. After meeting with the plan examiner, either side may then state its intent to seek a so-called CCD1 Construction Code Determination request for review of the plan examiner's decision with respect to any particular objection. The parties will then make a joint submission in which each will state its respective position on the CCD1 form. The CCD1 process will probably take about eight weeks until the DOB issues an appeal determination. The outcome will be deemed final for purposes of conditional lease assumption determination in Bankruptcy.

4. Roof Issue. On the roof issue, the FDNY has stated that there are several ways to comply with the FDNY roof code, including removal or relocation of the Debtor's equipment to create a compliant condition. The Debtor's proposal for a crossover over its existing equipment, although acceptable to the FDNY, requires additional roof space, including space in a portion of the roof that the Landlord intends to occupy for signage. The Landlord objects to that proposal because the Debtor's current use of the roof is already contrary to the Lease and is impeding the Landlord's signage plans, which are expressly reserved for under the lease the Debtor intends to assume. The Landlord sent the Debtor the attached schematic created by its signage architect showing the roof areas that the Landlord wants to clear. The Landlord intends to build an additional enclosed roof on the hashed and redline area so the signage will be an enclosure with the signage on the sidewalls of the enclosure, with an additional clear roof to provide clearance in the area above it, that the Landlord believes is FDNY compliant. The

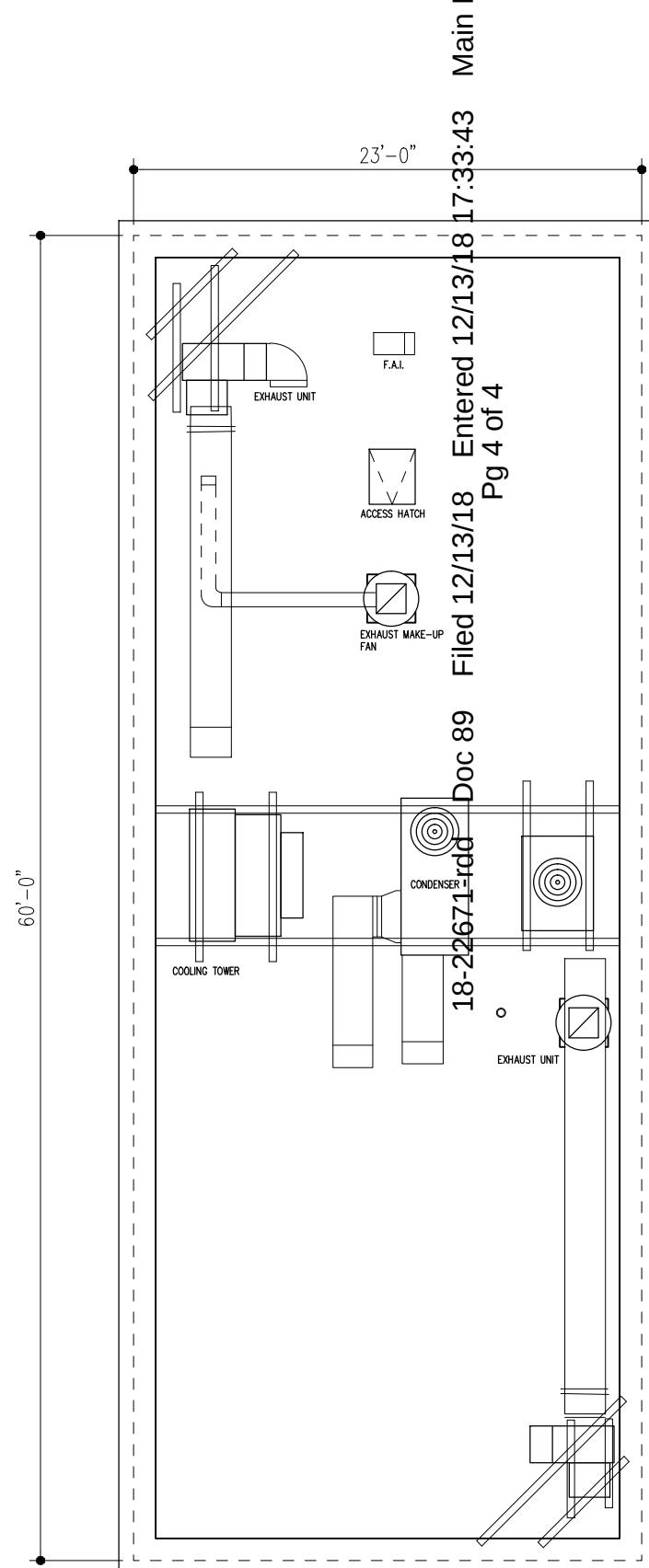
Landlord and the Debtor agreed to a meeting with the Landlord's director of building, the Landlord's FDNY expeditor and the Debtor's architect, to accomplish both the Debtor's and the Landlord's objectives in compliance with the Fire Code.

WHEREFORE, the Mortgagee respectfully requests that the parties proceed as outlined herein, and that the Court grant such other relief as may be just and proper.

Dated: New York, New York
 December 13, 2018

BACKENROTH FRANKEL & KRINSKY, LLP
Attorneys for the Landlord

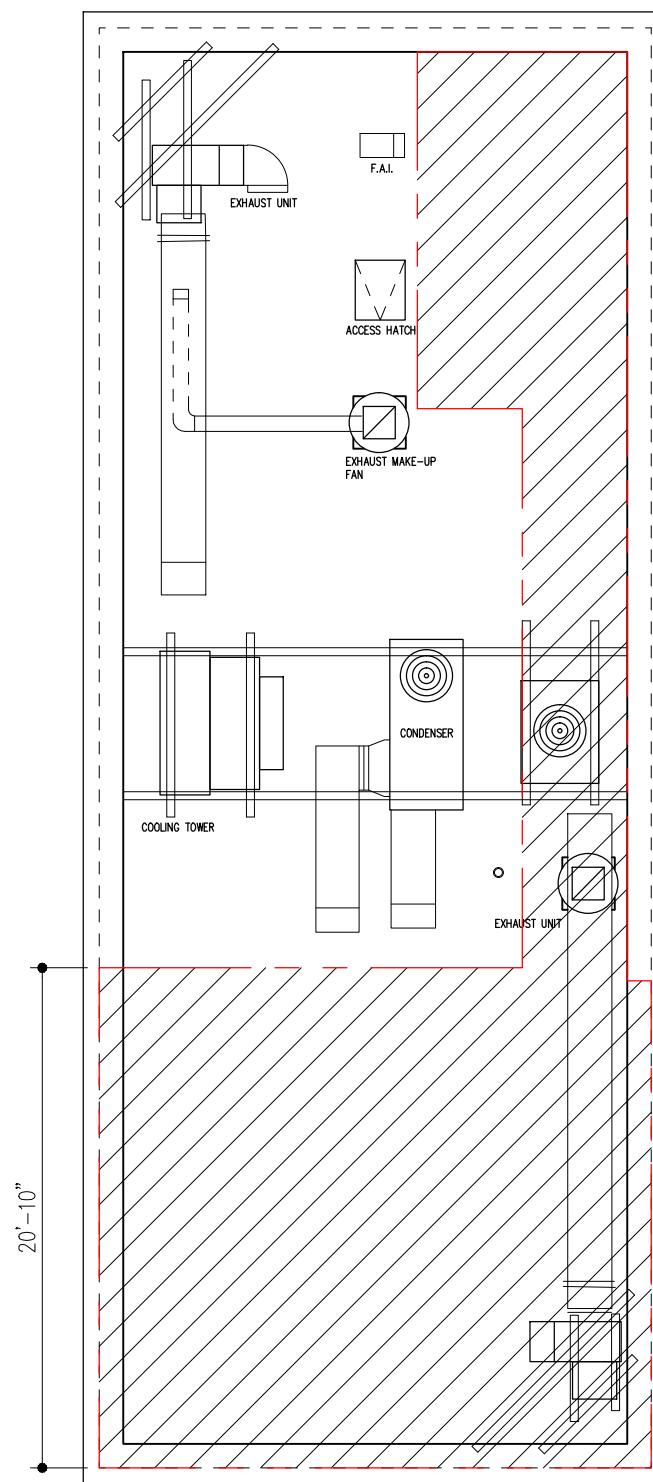
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1 EXG ROOF PLAN
SK1 1/8"=1'-0"

RETAIL ADDITION - SK1

461 7TH AVE



2 PROPOSED ROOF PLAN
SK1 1/8"=1'-0"